

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 97-045-C - ORDER NO. 97-548

JUNE 27, 1997

IN RE: Application of Custom Network Solutions,) ORDER
Inc. for a Certificate of Public Convenience) APPROVING
and Necessity to Provide Intrastate Resold) CERTIFICATE
Telecommunications Services within the State)
of South Carolina and for Alternative)
Regulation.)

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Custom Network Solutions, Inc. ("CNS" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide intrastate resold and operator assisted telecommunications services within the State of South Carolina. Additionally, the Application requested that all of CNS's business service offerings (including its operator service offerings) be regulated pursuant to the procedures described and set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1996) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed CNS to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the

Notice of Filing was to inform interested parties of CNS's Application and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. CNS complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was filed by the Consumer Advocate for the State of South Carolina ("Consumer Advocate").

A hearing was commenced on June 17, 1997, at 11:00 a.m., in the Commission's Hearing Room. The Honorable Guy Butler, Chairman, presided. CNS was represented by Bonnie D. Shealy, Esquire. Elliott F. Elam, Jr. Esquire, represented the Consumer Advocate, and Florence P. Belser, Staff Counsel, represented the Commission Staff.

Marc Rozar, Executive Vice President of CNS, appeared and offered testimony in support of CNS's Application. The record reveals that CNS is a New York corporation which is registered to do business in South Carolina as a foreign corporation. Mr. Rozar explained the Company's request for authority to provide interexchange telecommunications services in South Carolina as a reseller. The record reveals the Company's services, operations and marketing procedures.

Further, Mr. Rozar offered that CNS possesses the technical, financial and managerial abilities to provide its services in South Carolina. The record further reveals that the Company agreed to and made certain changes to its proposed tariff, as suggested by the Staff and the Consumer Advocate, to comply with

Commission guidelines and prior Orders.

The Company introduced a Stipulation that the Company had reached with the Consumer Advocate. By its Application, the Company requested that all of its business service offerings be regulated in the same manner as the Commission permitted for AT&T Communications of the Southern States, Inc. ("AT&T") pursuant to the procedures set forth in Order No. 95-1734 and Order No. 96-55 in Docket No. 95-661-C. In particular, CNS seeks that:

(a) its business services offering tariffs not be required to state maximum rates (caps);

(b) such tariffs be presumed valid upon filing, subject to the Commission's right within seven (7) days to institute an investigation of the tariff filing, in which case such filing shall be suspended pending further order of the Commission;

(c) it shall be subject to the same monitoring process as similarly regulated companies.

The Stipulation further provides that:

(1) the Consumer Advocate does not object to CNS's requests regarding presumptively valid tariffs and a similar monitoring process;

(2) the Consumer Advocate has appealed the Commission's decisions in the AT&T (Porter v. PSC and AT&T, 96-CP-40-0677) and Cable & Wireless (Porter v. PSC and Cable & Wireless, 96-CP-40-3187) cases and that the AT&T appeal is currently before the South Carolina Supreme Court and the Cable & Wireless appeal is before the Court of Common Pleas in Richland County;

(3) should the Commission grant the full relief CNS requests, and should the Supreme Court find in the above-referenced AT&T appeal that the Commission lacks statutory authority to permit removal of the maximum rate caps in the manner granted for AT&T in Order Nos. 95-1734 and 96-55, then CNS will immediately, upon notice of such ruling, file the maximum rates shown on the Exhibit A which is attached to the Stipulation;

(4) in the interim period prior to the Supreme Court ruling on the AT&T appeal, CNS will inform the Consumer Advocate of any instances in which it raises prices for its the services at issue in this proceeding to a level which is in excess of the maximum rates on Exhibit A (attached to the Stipulation).

The Company requested Commission approval of the Stipulation. The Stipulation was voluntarily signed by the parties, and the Commission will therefore approve the Stipulation.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. CNS is incorporated under the laws of the State of New York and is licensed to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. CNS operates as a non-facilities based reseller of interexchange services and wishes to provide its services in South Carolina.

3. CNS has the experience, capability, and financial resources to provide the services as described in its Application.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to CNS to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Stipulation filed by CNS and the Consumer Advocate is approved by this Commission, is binding upon CNS and the Consumer Advocate, and shall be implemented as set forth in the Stipulation and this Order.

3. Regarding the Company's non-business services offerings, the Commission adopts a rate design for CNS which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984). CNS shall not adjust its rates for its non-business service offerings below the approved maximum level without notice to the Commission and to the public.

CNS shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1996).

4. With regard to business service offerings, CNS requested that its business service offerings not be required to state maximum rates; that its tariffs be presumed valid upon filing, subject to the Commission's right within seven (7) days to institute an investigation of the tariff filing, in which case such filing would be suspended pending further order of the Commission; and that it be subject to the same monitoring process as similarly regulated companies. CNS's request is similar to the regulatory treatment approved for AT&T in Docket No. 95-661-C as granted in Order No. 95-1734 and Order No. 96-55. CNS and the Consumer Advocate reached a Stipulation regarding CNS's request, and the Commission has approved the Stipulation herein.

Therefore, pursuant to the Stipulation and Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C, CNS is granted "alternative regulation" as set forth in Orders Nos. 95-1734 and 96-55. Therefore, with respect to business service offerings, including credit card services, operator services, private line services, and customer network offerings, tariff filings will be presumed valid upon filing. If the Commission institutes an investigation of a particular filing within seven days, then the tariff filing will be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to CNS also.

Pursuant to the Stipulation approved herein, should the Supreme Court find in the above-referenced AT&T appeal that the Commission lacks statutory authority to permit removal of the maximum rate caps in the manner granted for AT&T in Order Nos. 95-1734 and 96-55, and granted to CNS herein, then CNS will immediately, upon notice of such ruling, file the maximum rates shown on the Exhibit A which is attached to the Stipulation. Furthermore and also pursuant to the Stipulation, in the interim period prior to the Supreme Court ruling on the AT&T appeal, CNS will inform the Consumer Advocate of any instances in which it raises prices for its business services offerings to a level which is in excess of the maximum rates on Exhibit A (attached to the Stipulation).

5. If CNS has not filed its revised tariff and price list by receipt of this Order, CNS shall file its revised tariff and an

accompanying price list within thirty (30) days from the date of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

6. CNS is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

7. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. CNS shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If CNS changes underlying carriers, it shall notify the Commission in writing.

9. With regard to the origination and termination of toll calls within the same LATA, CNS shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993).

10. CNS shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

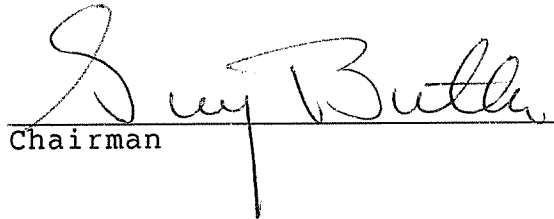
11. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level,

customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

CNS shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. Attachment B shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced, and the Company is directed to comply with the Commission regulations unless waived by the Commission.

12. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)

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ATTACHMENT A

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS
FOR INTEREXCHANGE COMPANIES AND AOS'S

COMPANY NAME

FEI NO.

ADDRESS

CITY, STATE, ZIP CODE

PHONE NUMBER

- (1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS* FOR 12
MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.
- * THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION
WORK IN PROGRESS, ACCUMULATED DEFERRED INCOME TAX,
CONTRIBUTIONS IN AID OF CONSTRUCTION AND CUSTOMER DEPOSITS.
- (4) PARENT'S CAPITAL STRUCTURE* AT DECEMBER 31 OR FISCAL YEAR
ENDING _____.
- * THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION
PAYABLE), PREFERRED STOCK AND COMMON EQUITY.
- (5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND
EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE
AMOUNT OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS
WELL AS METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT
(SEE #3 ABOVE).

SIGNATURE

NAME (PLEASE TYPE OF PRINT)

TITLE

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ATTACHMENT B

INFORMATION OF THE AUTHORIZED UTILITY REPRESENTATIVES
FOR INTEREXCHANGE, LOCAL AND AOS COMPANIES

PURSUANT TO SOUTH CAROLINA PUBLIC SERVICE COMMISSION
REGULATION 103-612.2.4(b), each utility shall file and
maintain with the Commission the name, title, address, and
telephone number of the persons who should be contacted in
connection with Customer Relations/Complaints.

Company Name/DBA Name

Business Address

City, State, Zip Code

Authorized Utility Representative (Please Print or Type)

Telephone Number

Fax Number

E-Mail Address

This form was completed by

Signature

If you have any questions, contact the Consumer Services
Department at 803-737-5230